Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

DOCKET FILE COPY ORIGINAL

In the Matter of	)	
	)	**MM Docket No. 99-25**
Creation of a Low Power Radio Service	)	
	)	
	)	

To The Commission:

COMMENTS OF

METRO DETROIT BROADCASTING CORPORATION

METRO DETROIT BROADCASTING CORPORATION

Talib I. Karim
KARIM & JUDD, P.L.L.C.
1140 Connecticut Avenue, NW
Washington, D.C. 20036
(202) 331-5552

Its Attorney

May 28, 1999

TABLE OF CONTENTS

Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	**MM Docket No. 99-25**
Creation of a Low Power Radio Service	)	
	)	
	)	

RECEIVED
MAY 28 1999
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To The Commission:

COMMENTS OF METRO DETROIT BROADCASTING CORPORATION

Metro Detroit Broadcasting Corporation ("Metro Detroit"), by its attorney, hereby submits its Comments in the above-referenced proceeding, which proposes the creation of a new, low power broadcasting service (hereinafter "Low Power FM"). These Comments explain Metro Detroit's position that Low Power FM service is sorely needed to increase the diversity of programming and ownership in the broadcasting arena. However, Metro Detroit urges the Commission to adopt rules that would establish this service in a manner that brings about the intended results of addressing unmet needs for community-oriented broadcasting, fostering opportunities for new broadcast ownership, and promoting diversity of broadcasting ownership and programming. *Notice of Proposed Rule Making* in MM Docket No. 99-25, FCC 99-6 (rel. Jan. 28, 1999) ("*NPRM*").

I. BACKGROUND OF METRO DETROIT

Metro Detroit is the general partner in Highland Park Broadcasting L.P. ("Highland Park Broadcasting"), a holder of a construction permit for low-power television station W68CH ("TV68") in Detroit, MI. Metro Detroit's principal stockholders are amongst the most experienced broadcasters in Detroit.[1] The genesis for this company sprang from the demand for community programming outlets following CBS' acquisition of WGPR-TV in Detroit, the country's first full-power TV station with majority Black ownership.

Metro Detroit's President & CEO, Robert J. ("RJ") Watkins, also presides over a nonprofit company that operates a 10-watt Class-D FM noncommercial radio station, WHPR-FM ("88.1").[2] Although both TV68 and 88.1 are low power facilities, each station is operated in a manner that seeks to make the best use of their collective resources. For example, public affairs programming originated on 88.1 is also broadcast on TV68. In addition, the studios of both stations are housed in the same building. Since neither TV68 nor 88.1 are full power facilities, Metro Detroit contends that it would not be prohibited from owning Low Power FM stations under the Commission's proposed rules.

In 1997, the future of TV68 was threatened when it, and numerous other television stations operating on channels 60-69 of the radio broadcasting spectrum, were ordered to vacate these frequencies.[3] The Commission provided Metro Detroit with some relief by permitting it to apply for a replacement channel within its current broadcasting market.[4] However, since many of the once-vacant channels have been allocated to Detroit's seven (7) full-power TV stations for DTV service, the only channels available to Metro Detroit receive and/or cause interference to neighboring

---

[1] Notably, Metro Detroit's President, RJ Watkins is known throughout Detroit as the host of the popular programs, "Latenight Entertainment", a talk-show, and "The New Dance Show." Watkins, like many others in Detroit broadcasting, started their careers with WGPR-TV/AM.

[2] The licensee of the low power Class D station is RJ's Late Night Entertainment, Inc.

[3] *See* Report and Order, FCC 97-421 (expanding the amount of spectrum allocated for two-way communications used by state and local police, fire, and ambulance departments).

[4] *See Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order*, MM Docket No. 87-268.

stations. Thus, Metro Detroit faces the prospect that it may not receive a replacement channel.[5] Moreover, even if the Commission grants Metro Detroit's requested replacement channel, the new station's coverage area will be significantly smaller than that which TV68 currently possesses.

In addition to Metro Detroit's regulatory dilemmas, like many Black-operated media enterprises, it has been virtually locked out of the market for lucrative national advertising revenue. This situation is due, in part, to longstanding racial biases prevalent in the advertising industry. (KOFI A. OFORI, CIVIL RIGHTS FORUM ON COMMUNICATIONS POLICY, *WHEN BEING NO. 1 IS NOT ENOUGH: THE IMPACT OF ADVERTISING PRACTICES ON MINORITY OWNED & MINORITY-FORMATTED BROADCAST STATIONS* (1999). In an effort to compensate for the lack of large national advertisers, Metro Detroit offers discounted air-time to local small businesses and community programmers. Although this practice facilitates greater programming diversity, it does not generate enough revenue for Metro Detroit to financially thrive. Consequentially, Metro Detroit's annual revenue is roughly equivalent of to 1 percent of the $50,000,000 threshold needed to elevate it beyond the federal government definition of a small business.

II. NEED FOR LOW POWER FM SERVICE

Metro Detroit asserts that Low Power FM service is needed to provide greater access to a variety of diverse ideas and opinions that are virtually censored by the mainstream media. Diversity of viewpoints is rooted in long held legal principles. FCC v. National Citizens Committee for Broadcasting, 436 U.S. 775, 780 (1978) ("FCC v. NCCB"). In FCC v. NCCB, the Supreme Court

---

[5] On May 29, 1998, Metro Detroit filed an Application for Displacement Relief (File No. BPTTL-980601ME-RFS), this application was supplanted on November 12, 1998 (File No. 981112JA). The approval of this application requires waivers of the Commission's interference rules. *id.*

found that " . . . the [FCC] has long acted on the theory that diversification of mass media ownership serves the public interest by . . . preventing undue concentration of economic power." *Id.* Though proclaimed over fifty years ago, the statement above is even more poignant today in light of efforts of large corporations to consolidate ownership of the broadcasting airways.[6]

No group has been more affected by the current environment of consolidation than minority broadcasters. In 1998, minorities owned less than 3% of all commercial broadcasting stations. *Minority Commercial Broadcast Ownership in The United States*, NAT. TELE. INF. AD., (The Min. Tele. Dev. Program), Aug. 30, 1998 at 1. Furthermore, nearly two-thirds of minority commercial radio owners are single station owners. *Id.* at 5. In addition, minority owners are experiencing tremendous difficulty competing with large station groups, which wield considerable leverage over advertising revenues and syndicated programming. *Id.* at 3. Minority owners also complain that they are being robbed by large station groups of their best management, sales, and on-air talent. *Id.*

III. OWNERSHIP RESTRICTIONS

Metro Detroit cautions the Commission against establishing Low Power FM service in a manner that places a wedge between existing minority broadcasters and those that would be spawned from this new service. Such a schism is bound to result if the Commission adopts its proposed rules totally restricting persons or entities with attributable interests in full power broadcast stations from owning interests in a Low Power FM station. Instead, Metro Detroit urges the Commission to adopt ownership restrictions that provide opportunity to new entrants without aversely affecting most existing minority owners.

---

[6] The recently announced planned mergers of radio giants, Captsar Media with Chancellor Broadcasting and Clear Channel Communications with Jacor Communications, typifies the rapidly expanding influence of mega-corporations in radio.

A. **Small Broadcaster Waiver of Ban Prohibition Low Power FM Station Ownership by Existing Broadcasters**

As a Black-owned media company, Metro Detroit appreciates the need for additional diversity in the broadcasting industry. However, Metro Detroit contends that it would be counterintuitive to apply the proposed ownership restrictions on owners of low power television stations, noncommercial broadcasting stations, or owners of two or fewer commercial broadcasting stations. The individuals or entities in this class (hereinafter, "Small Broadcasters") do not pose the same threat to goals of Low Power FM service as do larger broadcasters.

As stated above, many one- and two-station owners are in fact being forced out of the business by large station groups. A waiver for low power television broadcasters is justified since they possess specialized experience in operating low power stations that could be valuable in the establishment of this new service. Noncommercial broadcasters should be granted a waiver due to the fact that this group operates purely for the public benefit and convenience. Furthermore, noncommercial broadcasters such as Howard University, Public Broadcasting Service, and Pacifica Foundation have been leaders in offering new and diverse programming. Moreover, this group has generally been proactive in the hiring and promotion of ethnic minorities and women within their workforce.

The benefits of expanded ownership by Small Broadcasters outweigh the harm of slightly lessening opportunity for new entrants. By permitting Small Broadcasters to acquire Low Power FM stations, their experience could improve the quality of broadcasting service provided to the public.

B. **Prohibition of Joint Sales Agreements, Time Brokerage Agreements, and LMAs**

The *NPRM* proposes to prohibit joint sales agreements, time brokerage agreements, local marketing or management agreements (LMAs), and similar arrangements between full power broadcasters and Low Power radio entities. This proposal, as with the proposed ownership restriction, aims to increase new entry, diversity, and new programming services in the broadcasting industry. Metro Detroit contends that these goals would, in fact, be hindered if Small Broadcasters were prohibited from forming cooperative arrangements with Low Power FM licensees. Such cooperative arrangements would foster relationships that could yield a higher quality of programming from the outset of this new service. Furthermore, these relationships could yield a source of relatively stable income for the entrepreneurs and organizations who venture into the untested waters of Low Power FM broadcasting.

In attempting to further the laudable aims of this new service, it is important that the Commission not create overbroad regulations that would prevent Low Power FM licensees from securing the assistance of able allies -- Small Broadcasters. Such regulations would be analogous to tossing minnows (Low Power FM licensees) into shark infested seas (the rapidly consolidating broadcasting industry). As a means of ensuring that Low Power FM service becomes viable, the Commission should create a win-win environment for the new licensees. Such an environment could be created by permitting or actually encouraging cooperative relationships between Small Broadcasters and new Low Power FM licensees.

C. **One-Per-Market Rule**

The *NPRM* anticipates that no entity or individual would be permitted to own more than one Low Power FM station in the same community. This rule appears to overlook the benefits that could be gained from joint ownership and operation of two or more Low Power FM stations within the same market. One advantage is the ability to reach scattered populations of targeted audiences within a given metropolitan area. Since the signal reach of Low Power stations is likely to be a tenth of that enjoyed by full power stations, the ability to develop a niche by targeting specific groups will be crucial to the viability of this new service. A one-to-a-market rule could effectively prevent a Low Power FM broadcaster from directing valuable programming to particular civic, ethnic, or religious groups whose members may be dispersed across pockets of the same market.

Metro Detroit realizes the real possibility that an absence of local ownership caps would lead to the formation of "mini Chancellors and Clear Channels." Due to this prevailing fear of consolidation within the Low Power radio market, a more reasonable restriction may be a three-station-per-market cap for Low Power FM broadcasting.

If the Commission chooses not to establish a higher local ownership cap for Low Power FM service, then alternatively it should reduce the area included within the "community of license" (i.e., "community" or "market") for Low Power FM licensees. The community of a Low Power FM station should be smaller than that of its full power counterpart in light of the disparity of power levels. Such would permit Low Power FM stations to more effectively target finite audiences that are spread out across various locals.

It may be preferable to redefine the markets of Low Power FM stations by subdividing existing communities into smaller coverage areas. Such areas should be designed to correspond with the number of people within the reach of a 1000-watt Low Power FM station. These new micro-market designations would be more applicable given the comparably reduced reach of Low Power FM stations. Furthermore, with reduced market sizes, a one-to-a-market cap could be feasible since it would not deprive Low Power FM broadcasters of the ability to reach specific audiences within large metropolitan areas.

D. **National Ownership Caps**

The *NPRM* solicits comment on whether it would be reasonable to impose a national ownership cap of five or ten Low Power FM radio stations per owner. *Id* at ¶ 60. Metro Detroit contends that a Low Power FM service national ownership limit should be set at 10 or more. The Commission is correct in its conclusion that there are greater benefits than costs associated with relaxing ownership restrictions on the national level. As articulated in the *NPRM*, operating a group of Low Power FM stations may provide a licensee with the experience necessary to break into the ranks of full power broadcasters. *Id* at ¶ 60. Furthermore, such station groups may indeed permit a licensee to provide programming to groups of targeted listeners who are spread across the country. Therefore, setting the national ownership cap in this manner will assist Low Power FM service in becoming fully viable.

IV. LOCATION OF STATIONS -- URBAN VS. SUBURBAN/RURAL

In most urban cities, the broadcasting spectrum is densely populated. With such a large number of existing stations, large cities have scarce space for additional radio stations. To address this situation, the Commission proposes to relax its interference restrictions. Specifically, the *NPRM* expresses the Commission's interest in eliminating 2nd- and 3rd-adjacent channel protection standards. *Id* at ¶ 42.

Metro Detroit contends that the elimination of spacing protections for 2nd- and 3rd-adjacent channels is critical for the successful introduction of Low Power FM broadcasting. As articulated above, the *NPRM* envisions that this new service would reach an ethnic community dispersed throughout an entire city. *NPRM* at ¶ 11. However, unless the 2nd- and 3rd-adjacent channel protections are eliminated, urban cities, which contain the largest populations of ethnic minorities will be disadvantaged. Specifically these cities will receive few Low Power FM stations with sufficient strength to reach an adequate portion of the intended ethnic audiences.

A Low Power FM service which disadvantages urban cities would contravene the

Commission's stated objective of remedying consolidation. It is commonly understood that consolidation is most significant in the top 50 markets, which are predominately comprised of urban cities. Moreover, NTIA has found minority broadcasting ownership to be at its lowest within urban cities. *Minority Commercial Broadcast Ownership in The United States*, NAT. TELE. INF. AD., (The Min. Tele. Dev. Program), Aug. 30, 1998 at 2.

If the above-mentioned interference restrictions are not relaxed, then the bulk of the most beneficial Low Power FM facilities (i.e., 1000-watt or "LP1000s" and 100-watt or "LP100s") may be allocated to rural or suburban communities. This result would stifle the Commission's goal of using Low Power FM broadcasting service to diversify broadcasting ownership. *NPRM* at ¶ 1. Furthermore, such a scenario might subject the Commission to claims of discrimination and bias against urban communities and their inhabitants.

V. COMMERCIAL VERSUS NONCOMMERCIAL

The Commission has requested comment on whether to prohibit advertisements from being aired on Low Power FM stations. Metro Detroit contends that such a prohibition could significantly reduce the numbers of Blacks and other ethnic minorities who could afford to take advantage of this opportunity. Although the cost of constructing a station of the weakest class of Low Power FM service (i.e., the 1-10-watt or "microradio" class) could run as low $300, construction costs of LP1000s could be as much as $200,000. Limiting the methods by which Low Power FM licensees could recoup their investment might potentially make this venture too risky for the average community organization or entrepreneur. Such a risk would defeat the Commission's purpose of limiting the entry cost of broadcasting ownership. *NPRM* at ¶ 10.

The Commission itself admits that LP1000 and LP100 stations may both need to generate advertising revenue in order to remain operational. *NPRM* at ¶ 69. Advertising revenue would assist Low Power broadcasters in providing quality programming. In addition, permitting Low Power FM stations to sell broadcasting time would serve a valuable function of making radio advertising available to small businesses whose limited budgets and target audience would otherwise prevent such. Thus, rather than competing with full power stations, Low Power FM facilities would actually expand the advertising market.

As concluded by the Commission, permitting Low Power FM stations to sell advertising would not harm efforts of nonprofit entities to acquire Low Power FM facilities. *NPRM* at ¶ 69. In fact, it can be reasoned that nonprofit entities actually enjoy an advantage over their commercial counterparts in pursuing Low Power FM licenses. First, nonprofit entities have exclusive selection of stations that are within the band reserved for noncommercial service. Second, nonprofit entities are also entitled to acquire stations in the "unreserved" band. If the Commission opts to prohibit the commercial use of Low Power FM facilities, nonprofits would receive an even greater advantage, which would unduly harm entrepreneurs and small businesses.

VI. COMPETING (MUTUALLY EXCLUSIVE) APPLICATIONS

The Commission proposes to resolve competing applications through either auctions or lotteries. Both of these approaches would be averse to the interests of Blacks and other ethnic minorities seeking entry into the broadcasting business. In the past, Blacks and other ethnic minorities have fared poorly in auctions due to a lack of capital. A lottery system is too speculative and does not take into consideration the quality of applicants' proposed public services. Metro Detroit contends that the better approach is to award contested licenses via a significantly shortened version of the existing comparative hearing process. In such a process, the Commission would award contested stations to applicants that demonstrate the best public service offerings.

Metro Detroit concedes that the Balance Budget Act of 1997 appears to mandate the use of auctions in cases of mutually competing applications for lucrative commercial broadcasting facilities. Balance Budget Act of 1997, §§ 3002(a)(1-2), *codified* as 47 U.S.C. §§ 309(I-j) (generally, the "Communications Act"). However, Metro Detroit contends that the Communications Act authorizes the Commission to utilize some other means of resolving mutually competing applications for Low Power FM stations. In mandating the use of auctions, Congress sought to remedy the windfall inuring to broadcasters from their use of public property -- the air waves. 47 U.S.C. § 309(j)(3)(C). Furthermore, it is reasonable to conclude that Congress enacted its "Auctions Mandate" in response to a perception of minimal public service value being derived from existing commercial broadcasting.[7]

The aforementioned provides ample support for exempting Low Power FM service from the auctions requirement. First, Congress' intent to use the auctions process as a vehicle for enabling the public to share in the tremendous revenue derived from communications services would not be served by auctioning Low Power FM stations. The potential worth of Low Power FM facilities does not compare with that of their full power counterparts. Such an assertion is premised on the fact that the maximum power level at which Low Power FM station will be permitted to operate will be 100 times less than the maximum power level of the best full power stations. Thus, it stands to reason that the revenue of even the most powerful Low Power FM station could be 100 times less than that of its full power counterpart.

Another distinguishable feature is the public service characteristic of this new Low Power FM service. *See NPRM* at ¶¶ 1, 72 (expressing the Commission's expectation that Low Power FM

---

[7] *See* 47 U.S.C. § 309(j) (exempting from the auctions mandate, noncommercial educational broadcasting facilities, which serve a purely public service purpose).

radio service will yield substantially greater public service benefits than full power commercial radio broadcasting). Specifically, Low Power FM stations are likely to make the public airways much more accessible to civic groups, activists, and community leaders. Furthermore, the lower advertising rates which Low Power FM stations are expected to offer may greatly expand the numbers of businesses and nonprofits that can afford radio advertisements. Moreover, the modest expected profits of Low Power FM broadcasting are likely to attract a more service-oriented pool of operators than those in full power broadcasting.

The potentially adverse consequences of allocating Low Power FM facilities through auctions are surely not those intended by Congress. An auctions requirement for resolving conflicting applications for Low Power FM stations could price these facilities out of the range of those which this service is intended to serve. Instead of boosting ownership, an auctions requirement would enable some of the last remaining portions of the public's airways to be gobbled up by those with the deepest pockets. This scenario could produce yet another mega broadcaster seeking to dominate even those airwaves which Congress intended for community programming.

VII. ELECTRONIC FILING PROCESS

The *NPRM* proposes a mandatory electronic filing system through the use of the Internet. *NPRM* at ¶ 95. Metro Detroit contends that such a requirement would create significant barriers for small businesses and ethnic minorities. According to study authored by Vanderbilt University professors, there is still a significant race-gap in the usage of the Internet.[8] Thus, an exclusive Internet filing may thwart one of the intended benefits of Low Power FM service -- creating greater diversity within the ranks of broadcasting ownership. Furthermore, as was pointed out by the

---

[8] Donna L. Hoffman & Thomas P. Novak, Bridging the Digital Divide: The Impact of Race on Computer Access and Internet Use (February 2, 1998).

Commission, applicants could be unfairly denied licences due solely to technical problems of that routinely occur in the networks of Internet Service Providers. *NPRM* at ¶ 100. Moreover, based upon the low number of broadcasting stations with Internet Web sites, it stands to reason that even full power broadcasters do not have universal access to the Internet.

Another problem with a mandatory electronic filing requirement relates to the computer system required to process these applications. The Commission admits it currently has no system capable of processing the mounds of data that would be generated by such a mandatory electronic filing process. *NPRM* at ¶ 95. It is inconceivable that the Commission would mandate an electronic filing when the required system has not been created and thoroughly tested. Creating and testing such a system alone could significantly delay the implementation of Low Power FM service. Moreover, it would appear unfair to test a mandatory filing system on applicants for Low Power FM stations when such applicants are likely to possess far fewer technical resources than those vying for more lucrative communications facilities.

Metro Detroit does however recognize the benefits that could derive from an optional electronic filing system. Giving applicants the choice of filing electronically would enable those without Internet access to compete on equal footing as those with such access. In addition, postponing the implementation of a mandatory Internet filing until after Low Power FM licenses are allocated may very well be all the time that is needed for this new class of operators to become technically proficient enough to comply with such a requirement in the future.

VIII. CONCLUSION

Metro Detroit urges the Commission to press forward in creating this new service to fill the void in community-oriented programming. Yet, in establishing this new service, the Commission should do so in a manner that realizes its stated aims. Specifically, low power television station owners should not be excluded from owning or working in cooperative arrangements with Low Power FM licensees. Furthermore, the Commission should set liberal caps on the local and national ownership level of Low Power FM stations. In addition, for this new service to become viable, the Commission must permit Low Power FM broadcasters the fullest array of options for generating revenue. Such revenue will aid this new service in developing as an effective medium of community programming. Moreover, the Commission should create this new service in a manner that provides equal programming opportunities to both urban and rural communities, rather than favoring one over the other.

Finally, the Commission must establish an application process that fully considers the financial and technical disadvantage of prospective applicants. Therefore, in cases of mutually competitive applications, the Commission should conduct public interest examinations, rather than auctions or lotteries. Moreover, rather than mandating an Internet-based filing system, the Commission should implement an optional electronic filing process. This will avoid undue harm to small businesses and ethnic minorities with no or limited Internet access.

Metro Detroit contends that by adopting the above-mentioned recommendations, the Commission will serve the public interest and accomplish its goal of expanding opportunity within the communications marketplace as we enter the new millennium.

Respectfully submitted,

METRO DETROIT BROADCASTING CORPORATION

By: ______________________

Talib I. Karim
KARIM & JUDD, P.L.L.C.
1140 Connecticut Avenue, NW
Washington, D.C. 20036
(202) 331-5552

Its Attorney

May 28, 1999